

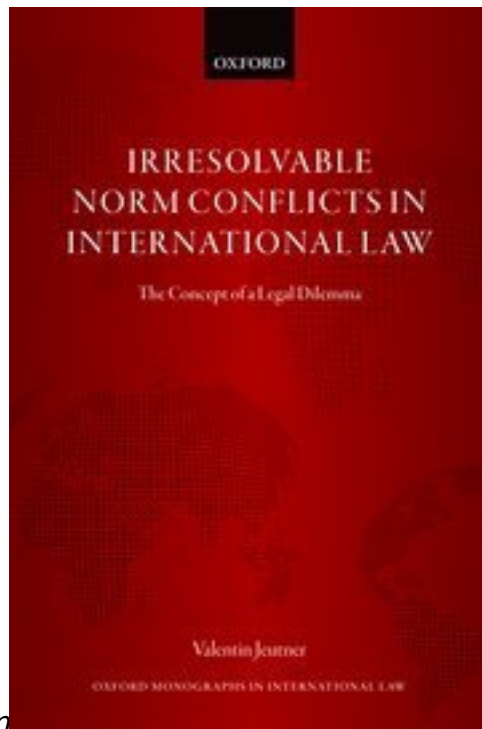
“The one who decides is guilty”

An interview with Wolfgang Thierse

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[Wolfgang Thierse](#) (SPD) was the President of the



German

Bundestag from 1998 to 2005 and its Vice-President from 2005 to 2013. From 1991 to 2013, Thierse was chairman of the SPD's Values and Principles Commission. Valentin Jeutner conducted the interview with Wolfgang Thierse on 21 May 2019 in Berlin. This English translation of the [authoritative German version](#) was prepared by Valentina Kleinsasser.

Valentin Jeutner: Mr Thierse, today I would like to talk to you about my recently published book. The book deals with the concept of dilemma in international law. Specifically, the book puts forward three theses: (1) There are dilemma situations in life. Namely situations where moral norms, legal norms, perhaps also political and religious norms contradict each other. (2) Situations of this kind require a real decision. It is precisely because norms and principles contradict each other in such situations that it is difficult to make a fundamental or principled decision. So situations of this kind require a decision in the truest sense of the word, a de-cision, something has to be severed. The third thesis is that – because this is the case, because principles do not lead the way in such situations – the person who decides assumes a

special personal responsibility for what is decided in this way. Perhaps we start with the first thesis. Are you familiar with dilemma situations?

Wolfgang Thierse: For me, the word dilemma, in the sense of its everyday meaning, always has the dimension of something hopeless. There is not one, obvious way out. In contrast, it is almost a normal situation that competing opinions, interests and competing points of view and arguments contradict each other. With respect to such situations, I would not yet speak of a dilemma. The dilemma exists only when there is no indication of how decision could be made. So perhaps I would use the term dilemma a little bit more cautiously.

The book actually employs the concept of dilemma also with considerable caution. In 99% of the cases we are most probably not confronted with a dilemma. These may be difficult decisions that you did not make easy for yourself, but in the end, there was a clear direction, or in the end, certain reasons prevailed.

So it comes close to what we usually call a decision of conscience. When I talk to people about my work in the Bundestag, I always say: Fortunately, the vast majority of decisions are not decisions of conscience, but rather decisions of a pragmatic nature, where the solutions are a little better or a little worse. The decisions of conscience are those which actually engage my fundamental convictions, where one has to ask oneself eventually, does this conform to one's conception of life, of people.

What are these fundamental convictions or questions?

First of all, of course, there are all the bioethical and medical-ethical questions about the beginning and the end of human life. But there are others. For example, I remember the decision on the right of asylum in view of the influx of many refugees from former Yugoslavia. At that time, we were faced with the question of how we could maintain the right of asylum while the mood in the country was tilting. Or the question: Can the German Bundeswehr be deployed abroad – again in the context of former Yugoslavia? I asked myself whether we were allowed to do this at all, when just 40 years ago German soldiers were already there as occupiers and had so terribly damaged the country. It is about human life – because it is about soldiers, but it is also about a historic responsibility and the question of what we have learned from the Nazi crimes. These are just a few examples of questions where we are dealing with questions of conscience.

Let us assume that you are confronted with such a question of conscience – and with this we are already approaching the second thesis of the book – how do you decide such a question, how do you prepare your decision in such a case?

The process is as follows: the topic is addressed in the discussions within the parliamentary party. Various topics are presented. When it comes to a topic that I am not really interested in, I rely on the expert politicians. They say: this is the problem and this is the solution we propose. Then I say: this makes sense, so I go along

with it. But when it comes to a question of conscience, the first thing you have to do is to think about the problem yourself. What actually is it that has to be decided? Then you start to do research, reading for example statements of the German Ethics Council, i.e. scientific expert opinions. As a Christian, I then also ask: What do the churches say? What do the moral theologians say? What do philosophers say who do not identify as Christians? So I deal with various, ideologically different positions regarding one question. In such a situation, I take a lot of time to arrive at an answer. You really torture yourself with it, you read a lot to really perceive and to understand the pros and cons so that one is eventually able to say: a given solution convinces me more, or is more appropriate.

So the decision-making process is about obtaining information, about acquiring knowledge. Is there also room for something like intuition, or is it a very awake, conscious process of consideration?

Yes, it is quite a conscious process. But you also have conversations. If you formulate an argument, a question, in a conversation, you also examine it indirectly. These are quite explicit processes. But at the end, there is also a small emotional moment, let's call it that. Because the question of what is human dignity or a good, meaningful life certainly has an emotional side. In the moment of the decision there is the realization: Yes! I'm doing that now! After many doubts and uncertainties, one has come to one's conclusion, now I make my decision like this. Of course, in the next moment you know that you will doubt the decision again, or you listen to another person and think that he has also a good argument, now I have to see again how strong my own is. Then there is also this phenomenon, and this may be different with lawyers, that you convince yourself a little while you are talking. This aspect must not be too strong. But that is part of it. I experienced this especially when I have spoken to ethical issues in the narrower sense. You repeat your own argumentation, refer to Kant and to the understanding of what you have learned and say: Yes, that's true. The argument you find is correct, it convinces myself. I even believe that this moment, when you are being convinced has knock-on effects on the people you talk to. I do not mean to be vain, but there are still many people who tell me: 'You always also talk as yourself and that convinces us. We get the impression that you as a person really mean what you say and that you are not just using empty phrases and idioms'. I believe that if you, in difficult decision-making processes, really consider and go through all the pros and cons from the surface to the most fundamental depths and then formulated it again and formulated it in such a way that you recognize that it was your own decision, then attentive listeners will notice that.

I, as an attentive listener, have now noticed that in your answer to the question of what you refer to in a decision-making situation, the moral philosophers, the theologians, the churches appeared. But do lawyers, or jurisprudence itself, play a role in such situations at all?

That depends a bit on the topic. One can ask oneself, for example, if something specific is permitted under international law, if our constitution allows it. That is part of the examination. But since such fundamental decisions are always law-making decisions, you have to know the existing law.

You have an advantage in such situations compared to those people who do not set the law, or compared to people who have to take a position with regard to concrete events, for example the Iraq or Afghanistan war, without being able to set the law in that sense. Because in those cases, the Bundestag does not have the competence to influence international law. If in such a situation a lawyer were to come and say – for example, in relation to Yugoslavia – that there is a duty to intervene and the lawyer would at the same time say that such an act would be prohibited under international law, how would you deal with it?

That debate did indeed take place. The question of humanitarian intervention, of the duty to intervene, of the responsibility to protect was raised. In connection with former Yugoslavia, consideration was given to the further development of international law in relation to what was previously almost sacrosanct – non-interference, respect for national sovereignty or, to put it in a politically slightly more snappy way, the Brezhnev Doctrine. That was part of the whole debate and it was taken into consideration. This debate was helpful, indeed. In this respect, the legal aspects play a role, but more in the broader context of interpretation. On the other hand, we also know today that it is problematic if things can be interpreted too liberally, because then one can intervene everywhere – which would quickly get us to discuss US-American politics.

Does that mean contradictory international law, that is, if one legal expert says that you may do X and another says that you must not do X, is less helpful, or that law which tolerates contradictions undermines itself?

Now, politicians adhere to this self-evident conviction: Two lawyers, three opinions. Of course, politicians respect the constitution, the Grundgesetz, and international law. But at the same time, we also know that these laws can be interpreted differently – one can just look at the difference between the Federal Constitutional Court and the European Court of Justice; or if you consider at the development of the United Nations with regard to international law. That is why legal issues play a role, but in the end you know: I have to decide. The law does not decide anything. I have to decide on the basis of law. That is a peculiar situation. The Austrian Minister of the Interior, who has just been removed, said this insane sentence: it is not politics that must be governed by law, but law that must be governed by politics. That, of course, is a fatally wrong sentence. We have law as our basis, the constitution and other binding laws. But in a situation in which something new has to be decided, in ethical, bioethical and medical-ethical matters, it is a question of new problem constellations. I must apply the existing law and, at the same time, examine it: Do I have to change my interpretation or interpret it in a new way? Thus, the political handling of a case situation can also change the law. If necessary, the Federal Constitutional Court will call you back.

Does that also mean accepting the risk that a decision might be wrong?

Yes, that applies now almost independently of the legal question. The decisive factor in a political decision is that it is a decision in an open situation. You make a decision without the absolute certainty that what you decide is right. Political

decisions are decisions in an open situation with the risk that the hoped-for effects of the decision will not materialize as anticipated. As a democratic politician, you can only be comforted by the fact that one can correct such decisions in a democracy.

At least some decisions.

Such decisions as [Hartz IV](#), which deals with a series of welfare state reforms: you have no choice, you have to try them out. Then you know whether it was the right thing to do. You cannot do that through an abstract discussion, because the experts, prophet on the right, prophet on the left, completely disagree with each other. This is the normal situation, that the expert opinions, the interests are completely different.

Then there are of course also cases where it is not possible to correct decisions. I am thinking, for example, of the [Hanns-Martin Schleyer](#) kidnapping or the decisions to go to war mentioned earlier, or the genetic interventions. Is it more difficult to take decisions in such cases?

Now these are different things. Military operations can be terminated. With the Schleyer decision, that is a completely different situation. This is a single concrete case. You have to decide, not knowing what effect this decision has – and in the end Schleyer was murdered. Helmut Schmidt has often described just how many people were involved in this decision. But in the end, the chancellor had to make the final decision. He described how difficult that was and that it was a decision that kept troubling him for a long time. It is something different with bioethical decisions, because they can still be corrected. Although, of course, there are developments that can no longer be rectified. That is less a matter of politics. It is a matter of science. Scientists and researchers may have to ask themselves such questions much more frequently. Politicians, politics itself, and I say this without reproach, in a certain way, always lag behind. Politics can only decide something once a problem has become visible, when it has matured, sometimes in a dramatic and unpleasant way. It is sometimes said that politics lags behind. Politics cannot help but lag behind. After all, we cannot make decisions in advance.

Is the fact that politics is lagging behind perhaps also an explanation for the fact that it seems as if we are repeatedly confronted with questions of conscience because people are simply not in a position to anticipate that which has not yet happened?

Yes, this is one of the reasons why there are always questions of conscience. You can express this in quite a profane manner: The decision is whether the possible is also the reasonable and necessary and whether we therefore allow it, or whether we have to shape it so that the possible becomes the humanly reasonable. But the possibility is not created by politics, but by scientific, technological and also economic developments.

Let us look again at the moment when we are confronted with such a possibility. Some would say that if we get such a question on the table – for example, the prenatal diagnostic question or the ex-Yugoslavia situation – and if we only think about it long enough and ask enough people, then there will be

an objectively justifiable answer. Others say: no, certain questions can never be completely resolved. There are simply certain contradictions in our human existence or in our society that cannot be resolved. We are basically trapped in a cosmos of norms in which things sooner or later contradict each other, even if we always abide by all the rules.

There are of course conflicts of norms, but first of all politics is in a different situation. We don't always have time for the first alternative – to be converse for that long. There is virtually no case where the opinions of the population are congruent. With Afghanistan, after 9/11, with Yugoslavia, with the right of asylum – you cannot just wait. One then exposes oneself to one's own discursive process, which we talked about at the beginning. There can also be competition between norms in disputes. That is then also a legal question. But we politicians also ask ourselves: what is the decisive point of view, the decisive norm, at the end of the day? One cannot avoid the decision. Those who cannot stand the heat should not go to the kitchen. Those who are incapable and unwilling to take part in decisions, to answer for decisions and to represent them to the outside world and to be insulted for them should rather write essays and poetry. They can, so to speak, reflect permanently. I described it once, with reference to my own biography, as the change from a problematizing observer to a problematic actor. Problematizing observers can see how others decide and do not have to make any decisions themselves and they can always go on and say that this is wrong and that is wrong. I can think all that, but at some point, I have to make a decision and stand up for it.

Is it easier to be a problematic actor in a world where one assumes that there are such inherent contradictions? Is it easier if you know that it is inevitable that sometimes one has to violate certain interests?

No, it is not easier. As a problematizing observer, I do not have to force myself to make a decision. And making decisions is not only always pleasant. There are decisions that were really hard for me. As a problematizing observer, I can continue to weigh things up. Intellectually, this can be highly stimulating and very enjoyable. From this position, you can also look with contempt at the problematic actors. I therefore do not believe that it is better to be a problematizing observer. But I think it is easier, intellectually more entertaining. The problematic actor has the more difficult job, but hopefully with the occasional feeling that a decision can also have a liberating aspect – because a decision brings an agonizing process of thinking and weighing to an end, and for a short time you can be hopeful that it was a good decision, that it was right, that the direction was right.

When does this time expire?

That depends. The public echo to a decision comes relatively quickly: this echo rains down upon you from the left and the right and from above and below. At that point, the moment of liberation and relief is gone. But sometimes you get a lot of approval for it. The second aspect is that you can then also see after some time has passed which effects a particular decision had. Let's take Afghanistan: At first one always thought and wanted to think that the intervention would have a positive effect. Now you can see after 15 years: It was all in vain. It is disappointing. Of course, one can

also ask oneself whether decision-making standards are only subjective agreements or whether there are really objective standards for action. But anyone who deals with political morality knows this simple sentence: Who acts, who decides, is guilty. There is no other possibility.

This is essentially the third and last thesis of my book: So you would explicitly say that every decision entails guilt?

Yes, because one always knows that one cannot satisfy all interests, all hopes, all expectations equally. In every decision there is a moment of one-sidedness, of arbitrariness. You do not want to decide arbitrarily, but you want to decide in accordance with all the rules of the art that we have talked about. Nevertheless, one knows eventually: There remains an impassable stretch: I have to jump.

Have you developed a certain method, over the years, of dealing with this responsibility? Or to put it another way: Did you perhaps find it difficult at first to accept that every decision also entails the assumption of guilt?

Yes, of course that was difficult for me at first. You have to get used to politics. There were many things that tortured me a lot in the beginning. Of course, you also had to deal with the question of guilt. But then you know that as a limited politician you shouldn't be succumb to fantasies of omnipotence. I openly admit that the Christian faith has helped me a lot in this regard.

How did the Christian faith help you?

You will laugh. I delivered a sermon in Naumburg Cathedral on Sunday and the designated sermon text concerned the parable of the [Birds of Heaven and the Lilies of the Field](#). The parable is a wonderful invitation to meet the two great dangers of politicians. Namely, the danger of overestimating oneself and the danger of over exhausting oneself. It is a reminder that you are not God. This invitation to assume a posture of serenity is important, you are not God, you are not omnipotent, but you must participate in the decision-making process. However, whether the decision was absolutely right or completely wrong, you cannot know at the moment of the decision and you should also not imagine that you can know it.

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